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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,133

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Filippa Brugliera

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EXAMINER

KUMAR, VINOD

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1638

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,133	<b>Applicant(s)</b> BRUGLIERA ET AL.	
	<b>Examiner</b> VINOD KUMAR	<b>Art Unit</b> 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-92 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-57, 60, 62-63, 65, 66-68, 70, 73, 77-80, 82-86, 89-90, 91 and 92, drawn to an isolated nucleic acid molecule comprising a sequence encoding a flavonoid 3', 5' hydroxylase, a construct, a method of producing a transgenic plant, or a genetically modified plant comprising said nucleic acid molecule.

Group II, claim(s) 58, 64, 66-67, 69-70, 81, and 91, drawn to method for producing a transgenic plant with reduced F3'5'H activity or altered inflorescence, or a genetically modified plant having reduced F3'5'H activity or altered inflorescence.

Group III, claim(s) 59, and 61, drawn to a method for producing a genetically modified plant with reduced indigenous or existing F3'5'H activity, said method comprising altering F3'5'H gene through modification of the indigenous sequences via homologous recombination from an appropriately altered F3'5'H gene, or wherein said method produces a flowering plant exhibiting altered inflorescence.

Group IV, claim(s) 71 and 72 drawn to an extract from a genetically modified plant or part thereof.

Group V, claim(s) 74-76 drawn to an isolated recombinant F3'5'H or peptide having F3'5'H activity.

Group VI, claim 87 drawn to an isolated molecule comprising a promoter of SEQ ID NO: 5.

Group VII, claim 88 drawn to an isolated molecule comprising a promoter of SEQ ID NO: 30.

The technical feature linking Groups I-VII appear to be a nucleic acid sequence encoding a flavonoid 3',5' hydroxylase. However, Holton et al. (WIPO, WO 94/28140, Published 8 December, 1994; Applicant's IDS) disclose a nucleic acid sequence

Art Unit: 1638

encoding a flavonoid 3',5' hydroxylase (see abstract). The reference also discloses making transgenic plants overexpressing said nucleic acid sequence (see abstract). The reference also discloses detecting delphinidin or delphinidin based molecules in a rose petal of said transgenic plant as measured by a chromatographic technique (see pg 22, lines 15-22).

Therefore, the technical feature linking the inventions of Groups I-VII does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

Applicants are reminded that different nucleotide sequences and amino acid sequences are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute different inventive concepts.

Applicant is also required to elect one nucleic acid sequence and its encoded protein with the elected Group of claims. In the instant case, for Groups I-V, one nucleotide sequence and its encoded protein from the following SEQ ID NOs: 9-18, 20-21, 26-27, 31 and 32. For Group I, Applicant is also required to elect one promoter sequence from SEQ ID NOs: 5 and 30.

Accordingly, Groups I-VII are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod Kumar whose telephone number is (571) 272-4445. The examiner can normally be reached on 8.30 a.m. to 5.00 pm.

Art Unit: 1638

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Vinod Kumar/  
Examiner, Art Unit 1638